right to permit the payment of the redemption price." (R. 115.) (Brackets our own.)

The Court again overlooked that the Creditor made an admission as follows:

"(h) On October 13, 1942, 5 days after the decision of the Court, Counsel for the Creditor mailed to Counsel for the Debtors, a motion which it had prepared and filed in the Circuit Court of Appeals with proof of service. By some oversight, said Counsel did not have it filed in the District Court and request the Clerk to include it in the transcript. Hence, it is not in the record. If the Creditor disputes this, the Debtors will ask the Court of Appeals to order it made a part of the record. For the sake of brevity we omit the notice and proof of service and insert only the motion as follows:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

In the Matter of Rufus Meshberger, et al., *Debtor,* Federal Land Bank of Louisville, *Appellant,* vs. Rufus Meshberger and Lelia B. Meshberger, *Appellees.*	No. 7871

MOTION OF APPELLANT TO REMAND CAUSE

Comes the Federal Land Bank of Louisville, and moves the Court to remand this cause to the United States District Court of the Northern District of Indiana, Fort

Wayne Division, for immediate entry of order of sale with leave to hold its place on the docket of this Court, for determination of (1) the reasonableness of the time allowed prior to sale to redeem, and (2) the reasonableness of the market value of the farm in question in the event the lower court refuses to order a sale of said property, the one year period of redemption having expired on May 27, 1942, and redemption not having been made.

(Signed) Theo. W. Bates,
(Signed) J. F. Williamson,
Attorneys for Federal Land Bank of Louisville."

(Appellants' Brief, pp. 30 & 31.)

This statement admits, the question was open as to "determination of (1) reasonableness of the time allowed prior to sale to redeem." The Creditor admits in its brief filed in said appeal that it sent this statement: It said:

> "The making of the motion cannot be considered an admission of record that the time to redeem is not settled but still an open question." (Debtor-Bankrupts' Brief, page 32.)
>
> (Appellee's Brief, R., p. 51.)

(24) This is an admission that there is no hard and fast rule, as to when the money is paid in. The only important thing is that the Debtor is able to redeem. The record shows the Debtor had a Commitment on December 8, 1942, but the trial Court did not notice it in the order.

It is the Rule that the Debtor cannot make the trial Court notice or consider a question raised. All they can do is to properly raise the question. If the Court ignores it, it is a ruling or finding against the Debtors and it gives them the right to assign it as error against them.

(25) The Court overlooked that Judge Duffy had the power to allow the Debtors to redeem notwithstanding the previous judgment of May 27, 1941. The Debtors' petition filed December 8, 1942, to redeem the land at its appraised value was the equivalent of a motion to vacate or set it aside. The Creditor did not plead res judicata and thereby waived such a motion to vacate. (R. 62-63.)

Instead of raising res judicata it pleaded that the $6,000.00 was not paid in within one year from May 27, 1941. We have shown by the decision of the Supreme Court in the Bronson case above that it was no answer at all. (R. 62.) Then it evaded the question again by asserting no stay bond was given (R. 62 (a)). The Supreme Court in the Bronson case said none was required; that the Creditor's appeal was a stay or supersedeas. Then it evaded it again (R. 62 (b)) by claiming the Commitment was not good because it was not paid in within one year after May 27, 1941. There again it is headed off by the ruling in the Bronson case that its appeal was a supersedeas and that the money did not need to be paid in until one year after October 9, 1942, when the Court of Appeals disposed of the appeal by affirming the judgment below. (R. 63.)

(26) Then it blundered again as to the $450.00 of stock by claiming it was entitled to a judgment against the Debtors for that. That was bringing in a new case and had the effect of setting the former judgment aside, or a motion to vacate it and try a new case as to the stock and as to the $843.00 of rent which it claimed. In bringing the new case it waived the question of res judicata.

(27) It could not claim the latter and at the same time bring in that which was a cross-action on the stock and rent. The rest of its answer never mentioned res judi-

cata but was on the merits to recover the $450.00 and $843.00. (R. 63-64-65.) If res judicata applied, then the Court had no jurisdiction. It waived both by demanding a judgment against the Debtors for the stock and rent. In place of that it abandoned the first judgment and consented that the Court had jurisdiction of the new cause of action. It shifted its position and lost its right to plead res judicata. (12 American & English Encyc. of Law.) (Old Ed. 299—Many Cases Cited.)

If the jurisdiction existed as to this new cross-action, it also existed as to the whole case and hence included the power of the Court to reconsider the right to redeem at $6,000.00. The Creditor could not open the door and have its cross-action adjudicated and close it as against the right to reconsider redemption.

(28) The Court erred in overlooking that Judge Duffy had the inherent power to reconsider and set aside the previous order of May 17, 1941, on another well-established principle of law. In the Creditor's Brief filed in its appeal from the above judgment of the District Court to the Court of Appeals, on page 12 it made the following important admission. It cited Kimm v. Cox, 130 F. (2d) 721 the Court of Appeals of the Eighth Circuit on September 8, 1942, the Court stated as follows:

> "First . . . Since a bankruptcy proceeding, from the filing of the petition to the final settlement of the estate, is but one continuous suit, and since the bankruptcy court is always open and has no terms, any order of the court may be re-examined and vacated within such pendency *unless such vacation would disturb rights which have become vested in reliance upon such order or action.*" (Italics ours.)
>
> (Appellant's Brief, p. 12.)

(29) We have shown above that the action of the Creditor in bringing in a new cross-action as to the stock and rent made it wholly unnecessary for any one to file a formal motion to vacate the former judgment. To contend otherwise would be absurd. The above rule applies here:

> "(i) This means the rights of third persons. It would not cover any rights of the Creditor to a public sale. It never had such a right as that as against the Debtors right to redeem at the appraised value.
>
> We cite on this point: 1 Remington Sec. 502, pp. 621-622.
>
> "(j) This author cites the Ives case, 113 Fed. 911 which covers the whole point.
>
> "(k) We call attention to the following decisions of the Federal Supreme Court which applies here: 'A Federal District Court has power to set aside its order dismissing a petition for reorganization of a corporation under 77 B of the Bankruptcy Act and to rehear the cause, notwithstanding the period allowed by the Act for appeal from the order, has expired.'"
>
> Wayne v. Owens, Illinois, 300 U. S. 131.

(l) If the hands of a Federal District Court "were tied" it could not carry out this Act of Congress or administer the law in the many Bankruptcy cases coming before it. It has many inherent powers, one of which is to modify a previous order in bankruptcy at any time before the rights of third persons have intervened. The proceedings are one continuous case. It would not be a Court of Equity if it did not have such powers.

(Appellees' Brief, p. 16.)

(30) If these cases mean anything it is that the doctrine of res judicata does not apply to the usual orders made in a bankruptcy proceeding and it does not apply to the judgment and order of May 27, 1941. Counsel is

aware that some of the Courts of Appeals have gone wrong on this doctrine but this Court should set them aright and adhere to the above holdings of Remington and the Ives case. (113 F. 911 and of this Court in Wayne v. Owens, 300 U. S. 131.)

(31) I have just examined Rose's Notes on the Bronson case. The latter is in good standing. The Notes cite 131 F. 430. I quote as follows:

> "In First National Bank, et al. v. State National, etc., 131 Fed. Reporter P. 430, May 2, 1904, the Court said: 'The precise point here raised has not been discussed in the National Courts, because the practice adopted by Appellant in the case is virtually unknown; but it has been incidently referred to in several decisions to the effect that the decree in the District or Circuit Court, when an appeal is taken therefrom, is suspended until the appeal is disposed of. This rule is frequently stated in Admiralty and other causes.' Court cites 6 Wheat. 194, 203—5 L. Ed. 239—also cites the Bronson case—22 L. Ed. 251—22 L. Ed. 259—26 L. Ed. 1065—27 L. Ed. 732 and 27 L. Ed. 888."

Then the Court in this case, 131 F. 430-(431), quotes from the opinion in the Bronson case: "In Bronson v. Railroad Co. supra the Court said: "They having appealed from the decree, it would be against all reason and principle to permit them to proceed in the execution of it pending the appeal. They assert the decree is founded in error, and for that reason should not be executed, but should be reversed and corrected in the Appellate Tribunal. The Appeal suspends the execution of the decree." (P. 431.) In Emsinger v. Powers cited above the Court said, "White the appeal was pending here, although there was no supersedeas, the Circuit Court had no jurisdiction to vacate the decree in pursuance of the prayer of a bill of review, be-

cause such relief was beyond its control." (Bronson case cited 13 So. 920-21) (131 F. 432).

The Bronson case is cited with approval in U. S. v. Cling Dong Ying, 229 F. 813 (816).

All of the decisions cited in Rose's Notes upholds the Bronson case as the law—that the action of a party in appealing a case amounts to a supersedeas and that judgment cannot be executed while the appeal is pending. If that be true it is dormant and does not run against the Debtor until the appeal is settled.

That hence, the Court of Appeals erred in not following the Appeals of the greatest Court in the Land and adhered to the Supreme Law of the Land and have reversed the lower Court and allowed the Debtors to redeem their Home at its appraised value.

Respectfully submitted,

RUFUS MESHBERGER,
LELIA B. MESHBERGER,
Husband and Wife.

Subscribed and sworn to by Rufus Meshberger before me this 9th day of February, 1944.

SAMUEL E. COOK,
Notary Public.

My commission expires April 7, 1947.

SAMUEL E. COOK,
Huntington, Indiana,
ELMER MCCLAIN,
Lima, Ohio,
Counsel for Debtors.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1945

No. 423

RUFUS MEADOWCROFT AND LECLA B. MEADOWCROFT,
Husband and Wife,
Petitioners,

vs.

THE FEDERAL LAND BANK OF LOUISVILLE, KENTUCKY,
Respondent.

SECOND PARAGRAPH

Petitions for Appeal from United States Circuit Court of Appeals for the Seventh Circuit to the Supreme Court of the United States

FILED
MAR 8 - 1946
CHARLES ELMORE CROPLEY
CLERK

Robert E. Cox,
Rushville, Indiana;
Frank McClain,
Lima, Ohio,
Counsel for Petitioners.

Gibson Publishing Co., Indianapolis, Ind.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1943

No. ——— IN BANKRUPTCY

RUFUS MESHBERGER AND LELIA B. MESHBERGER, Husband and Wife,
Petitioners-Debtors,

vs.

THE FEDERAL LAND BANK OF LOUISVILLE, KENTUCKY,
Respondent-Creditor.

No. ———

SECOND PARAGRAPH

DEBTORS' PETITION TO APPEAL, AS OF RIGHT, FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT TO THE SUPREME COURT OF THE UNITED STATES

TO THE HONORABLE HARLAN FISKE STONE, CHIEF JUSTICE, AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

I. PRELIMINARY

(1) Come now the Petitioners in the above cause and file their Second Paragraph of petition for and hereby appeal, as of right, to review the judgment of the United

States Circuit Court of Appeals for the Seventh Circuit entered December 2, 1942, to the Supreme Court of the United States. (The petition for a rehearing was denied by said Court on January 3, 1944.) Said petition respectfully shows that said appeal is based upon the following grounds:

(2) That said cause in said Court of Appeals was a proceedings in Bankruptcy under Section 75 of the Act of March 3, 1933, and its amendment by adding Sub-section (a) August 28, 1935, on the Subject of Agricultural Compositions and Extensions, which had originated in the District Court of the United States for the Northern District of Indiana, Fort Wayne Division, and appealed to said Circuit Court of Appeals. (11 U. S. C. A. 203-(s).)

(3) It is conceded by the authorities that the Statute or the Rules do not provide any particular form for said petition. However, the law favors the right of appeal. (2 R. C. L., p. 100.)

(4) This appeal being only a proceedings for review, it follows that the petition therefor would have to show that the questions sought to be reviewed were properly raised in the trial Court below. In addition to this the Petitioners would have to establish facts showing it had a good cause which entitled it to relief, i. e. That the Petitioners at this moment are entitled to redeem their home at the $6,000.00 which they have paid into Court for that purpose. It can not be disputed but that the Petitioners have the right to present the above. It will follow that theory in preparing this petition for this appeal.

(5) Hence, this is a real live law suit to save an American Farm Home, and it follows there is Justice and Equity in this appeal. This Court in the Wright case December

9, 1940, described the above Acts of 1933 and 1935 as follows:

> "This Act provided a procedure to effectuate a broad program of rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt."

(6) It may be suggested that the farmers are not distressed now. Suppose they are not. But go back to 1933 and 1935, and their condition was such that the papers were full of notices of sheriff's sales of farm land and thousands of them would have lost their homes had Congress not enacted this remedial legislation. Even with this legislation, in some Counties in Indiana, 20 per cent of the land owners have lost their homes.

(7) Then the bitter fight made by the Loan Companies in the Courts against this legislation cost thousands of farm homes. The case at bar is one that came up when farmers could not make enough to pay the taxes on their land, and it is still pending. The books are full of cases where the Inferior Federal Courts had refused to give the "distressed farmers" the benefits of these Acts. How unreasonable. They held that the Acts were unconstitutional, that Congress had no power to enact a law extending the period to redeem for three years, that the Debtors had not filed their petitions in good faith and that there was no reasonable hope that they could ever rehabilitate themselves within the three-year period and other technical objections which threw the "distressed farmers" out of Court and caused them to lose their homes.

(8) Not wishing to find any fault with Congress—(It is blamed for everything which goes wrong), but it had not provided any way to obtain the money with which to redeem. For without the aid of Congress they were as

helpless as a child. That prior to the commitment set out in this cause and on March 19, 1943, when they paid the $6,000.00 into Court, it was impossible to procure a farm loan from the Banks or Loan Companies. These "distressed farmers" found themselves between two millstones. True, they had a law and decision of the Supreme Court in the Wright case which allowed them to redeem their home at its appraised value of $6,000.00, but their Government had not provided a way to get the money with which to pay the appraised value. Without that the law was largely a "dead letter" until land went up and the Banks began to open their doors for farm loans. Hence, the Petitioners struggled along (but many gave up the ghost) rather than resort to litigation in distant Federal Courts.

II. BEGINNING OF THIS APPEAL

(1) On May 27, 1941, the Conciliation Commissioner to whom the case had been referred heard the evidence as to the value of the land and fixed it at $6,000.00 and gave the Debtors one year in which to redeem. (R. 30-32.)

(2) Something happened which changed the whole situation. The Record shows that on August 7, 1941, said Creditor attacked the above judgment and tried to overthrow it by appealing from the District Court to the Circuit Court of Appeals. It filed with its petition for appeal its assignment of errors or contested issues and a 15-page Brief (R. 107-122), and based its appeal on two grounds. That the one year to redeem was too long and the valuation of $6,000.00 was too low and that it should have been from $7,800.00 to $8,400.00 (R. 110) (R. 121). The Creditor also filed a Brief of 15 pages in the Court of Appeals attacking this valuation of $6,000.00 as too low. This was an attack on said judgment. It could not so attack it and

in the next breath claim it was in force and running against the Debtors. The Petitioners will show that the Supreme Court has held that said action of the Creditor in so appealing and trying to overthrow said judgment amounted to a supersedeas and that said time did not run until said appeal was ended on October 9, 1942, by the Court of Appeals affirming the judgment below. (R. 55.) It will be shown that this question was properly raised below.

(3) The decision of the Court of Appeals affirming the $6,000.00 judgment brought the case back to the District Court.

(4) The next proceedings was the Debtors' petition to redeem the land at $6,000.00. This was filed on December 8, 1942, within the year from October 9, 1942. In said petition said Debtors asked (1) to redeem said real estate at said appraisal of $6,000.00. (2) That the Debtors had the Commitment of a responsible Bank that it would furnish money to refinance said debt to the extent of $6,000.00. (3) That said Debtors own stock of the Wells County Federal Farm Loan Association and that said Creditor retained the sum of $450.00 and gave said stock for it. That it is provided in said stock that it should be deducted from said debt on final settlement. (R. 60-61). (4) That said rent ($843.00) should be deducted from said debt. (R. 61.) It will be noted that said stock and taxes were not brought into said first hearing and judgment. These issues were not litigated in the previous cause and judgment.

The Creditor moved to strike out said petition, demanded the rent ($843.00) above the taxes. (R. 62-63.)

The Debtors also filed supplemental petitions (Paragraphs 1 and 2.) (R. 66-71.)

The Creditor filed an answer which should be treated as a cross-action against said Debtors for said stock and that said rent be paid to said Creditor. (R. 63-65.)

(5) This action of the Creditor brought a new issue into the case, including the Debtors right to redeem. It thereby asked the Court to try the question as to the stock and $843.00 for rent which was in fact a cross-action against the Debtors, to recover a judgment against them and in its own favor, for $450.00 and $843.00. The authorities all hold that it thereby invoked the jurisdiction of the Court for all purposes. When a Court has jurisdiction of a part of a case that gives it jurisdiction over all of it. It thereby consented to the jurisdiction of the Court to hear and determine its cause, and when it consented to that for its own benefit, it is elementary that it could not deny the jurisdiction to redeem their land. This action of the Creditor set aside the $6,000.00 judgment. It is settled that a litigant can not open a door in its own behalf and profit thereby and then close it in the face of its opponent. This gave the Debtors the right to have the Court reconsider their right to redeem. The cases will be set out in the assignment of errors herein.

(6) The Debtors' petition was referred to Hon. F. Ryan Duffy for trial and was heard on January 29, 1943, and judgment entered on February 24, 1943. The Court did not seem to realize that he was considering a Bankruptcy case. He did not give the Act a liberal construction but a narrow technical one. The Court should have construed all of these questions in favor of redemption, as this Court stated: "Rather the Act must be liberally constructed to give the Debtor the FULL MEASURE of RELIEF afforded by Congress." Of what avail was it for Congress to enact these remedial laws and for this Great Court to admonish the Inferior Federal Courts to let noth-

ing stand in the way of allowing redemption, if these lower Courts refuse to enforce them? A law is a "dead letter" if not enforced.

(7) The Court paid no attention to the fact that the Debtors showed they had a commitment of a responsible Bank to refinance the loan to the extent of $6,000.00.

It denied the petition to redeem the real estate and ordered the Trustee to sell the land and the $450.00 worth of stock and allowed the Creditor to bid its debt at the sale. This meant it would bid its dead debt and get the price up to over $9,000.00, and make it impossible for the Debtors to pay $9,000.00 for $6,000.00 worth of land. Hence, the giving the Debtors 90 days to redeem amounted to nothing to the Debtors and meant that the Debtors would lose the land and it would be handed over to the Creditor. (Order in full, R. 74-76.) Oh, why should not a Court of Conscience see through such an unjust plan as that.

(8) The action of the Creditor in bringing into the case the new cause of action to recover the $450.00 and have the $843.00 of rent turned over to it reopened the above order and judgment and modified the same. This was the first time said items were made issues. This action amounted to a consent of the Creditor to give the Court further jurisdiction to reopen the judgment and hear said items, and also gave the Court jurisdiction to reconsider every part of the case and to allow the Debtors to redeem. The cases will be cited in the assignment of errors.

(9) From this modified Duffy judgment the Debtors appealed to the United States Court of Appeals on February 24, 1943. (R. 78.)

The notice of Appeal of said cause is found in the (Record 78-82). The Debtors made and filed its state-

ments of points of law and assignment of errors in substance as follows: This raised said questions and shows the errors of the Court.

The Court erred in denying the Debtors' Petition to allow them to redeem at its appraised value—$6,000.00.

That that part of the judgment of May 27, 1941, did not begin to run until Creditors' appeal was disposed of on October 9, 1942, and that the Court erred in holding it began May 27, 1941. That it erred in refusing to allow the stock credited on the debt and in not holding that said Creditor was indebted to them for the same. That the Creditor had no claim above said appraisal of $6,000.00 and in allowing it to bid its whole debt of $9,000.00 and thereby required the Debtors to pay $9,000.00 for $6,000.00 worth of land.[1] That the Court erred in ordering the rent money paid over to said Creditor and in not holding that said rent should have been credited on said debt. The Court erred in not finding the action of said Creditor in appealing from said $6,000.00 judgment suspended the execution thereof and the time did not begin to run until October 9, 1942. The Creditor could not seek to overthrow said $6,000.00 judgment and at the same time insist it was in force against the Debtors. The Court erred in not allowing the Debtors to redeem when it appeared they had the promise of a loan by a responsible Bank. The Court erred in not extending the time to redeem. The Court erred in ordering a sale when it was shown a loan was promised to redeem the land. The Court erred in overlooking that forfeitures are odious in Courts of equity and erred in enforcing that when it has been shown there was other ample remedy to extend the time to perfect a promised loan. The Court overlooked that the Supreme Court in

[1] It will not be disputed but that the record shows there is not a single building on the land. And that it will cost $8,000.00 to improve it.

the Bronson case 17 L. Ed. 616 held that the action of the Creditor in attacking the $6,000.00 judgment by a vigorous appeal suspended the execution of said judgment, until said appeal was ended on October 9, 1942. It was absurd for the Creditor to contend that it had the right to appeal and overthrow the $6,000.00 and at the same time require the Debtors to redeem from the judgment it was "turning Heaven and Earth" to overthrow. The Court erred in not following the decision of this Court in said Bronson case and the Court erred in denying the right to redeem. The Court erred in not holding that the Creditor by appealing from the judgment waived the right to enforce it until its appeal was decided against it. Because the effect of the Court of Appeals in affirming the $6,000.00 was, that the Creditor must accept the $6,000.00. The questions raised are shown again in the petition for a rehearing, with several additions. Then they are shown again in the assignment of errors attached to this petition as a part of this appeal.

(10) This brings us to the final judgment of the Court of Appeals, December 2, 1943. These points in their order: (a) The Court first calls attention to the long litigation in the case at bar. This opinion will be in the transcript of the proceedings in the Court of Appeals. The Creditor was to blame for that, but the Court does not say so. It leaves the inference the other way. This powerful Financial Institution "Turned Heaven and Earth" to deprive the Debtors of the right to redeem their land at its appraised value. What manner of man or woman would they be who would not fight for their Country or Home? (b) Then they filed their petition to redeem showing that they had a commitment for a loan for the $6,000.00 which was afterwards paid into Court within the year, and that it is still therein and cited a decision of the

Supreme Court which directly held that action of the Creditor in appealing suspended the running of the time until that appeal was settled. But the Court of Appeals tried to overrule that Great Court to deprive the "distressed farmers" of the right to save their land. In such a case the Supreme Court meant in the decision in the Wright case that the Court of Appeals should have allowed them to redeem and required this Great Financial Institution to Appeal. "Actions speak so loud we cannot hear ourselves talk." (c) Then the Court characterized the action of the Debtors in showing they had raised all of the questions below, as "Ancient History," and added it would "omit the ancient history." (d) The next its statement about the Wright case. That statement is not correct. Why did it not state that this same District Court (Judge Slick presiding) had fixed the value of the land at $6,000.00 and then refused to allow the Debtor to redeem at said sum and ordered the land sold at public auction? And it allowed the Creditor to bid its dead debt and made redemption impossible and thereby required the Debtors to pay $9,000.00 or $10,000.00 for $6,000.00 worth of land. Counsel here, appealed to this same Circuit Court of Appeals and it also refused to allow him to redeem and affirmed the decision below. Then Wright appealed to the Supreme Court and it held that he had the right to redeem at the appraised value. Then this Court speaks of "our mandate." The latter in effect came from the action of the Supreme Court in reversing the Court of Appeals. The latter was commanded to do what it did. This great decision liberated the "distressed farmers." (Wright v. Union Central, December 9, 1940, 311 U. S. 273.) (e) This is not all about said Wright case. There was a previous Wright case before this same Court of Appeals. The same District Court (Judge Slick presiding) as here also held

that Congress did not have the power to extend the period of redemption to three years and struck the 200 acres from the schedules and other objections were made to these remedial Acts. The same Wright again appealed to this Court of Appeals for relief. Did it give him relief? No. It decided against him and upheld the action of the District Court and the same Wright appealed again to the Supreme Court which held that Congress had the power to extend the time to redeem to three years and that as to the 200 acres, that it should remain in the schedules and was in Bankruptcy. (f) Then the Court says the redemption period "had expired and the question was moot." Saying a thing is so, does not make it so. The Supreme Court in the Bronson case says in principle the Creditor's appeal suspended the judgment and hence the time to redeem did not begin to run until October 9, 1942, the end of the appeal, and ended in one year from that date. Hence the question was not "moot." Strange that the Court would not follow the decisions of the Supreme Court and the other case cited on this point, but stranger still that it never cited a single case to support any question it noticed. It was the duty of the Court to cite cases in support of its rulings. If there had been any case, it would have been found by opposing Counsel here. If there are none the Court should say it searched and found none. Give us a revival in liberality in the Superior Federal Courts on these remedial Acts of Congress.

(g) Then the Court says the time to redeem ended May 27, 1942 (or July 10, 1942 when the order was approved) and that said order was a final judgment. It was a final judgment when entered but the action of the Creditor in afterwards filing a cross-action to recover the $450.00 of stock and the $843.00 of rent and the action of Judge Duffy in hearing evidence and allowing said

demands changed that judgment and re-opened it. The only final judgment now in this case is the one Judge Duffy entered, February 24, 1943. The present appeal is not taken from the one of May 27, 1941, but the later one, February 24, 1943. This appeal must stand or fall by the latter. These items were not in the first hearing and judgment so when the Creditor itself brought them in this case that amounted to a new case and it could not bring in these new items which had not been litigated in the Judgment of May 27, 1942 and then claim the first judgment was final. It was superseded by the one Judge Duffy entered on February 24, 1943.

(h) Then it makes a strange and ridiculous statement about the Bronson case and the other cases cited on the effect of a party appealing from its own judgment. Bear in mind this $6,000.00 judgment was a judgment prayed for and rendered in favor of the Creditor. It says: "Without analyzing the authorities relied upon by the Debtors, we think it is sufficient to state that we have examined them and they are not in point." The language of the Supreme Court and other decisions was so plain that no "analyzing" was necessary. Why are they not in point? Because we tell you so. An opinion not only decides the questions between the parties but it is also a precedent for the guidance of the Courts and litigants in the days to come. Instead of the Court asserting "the decisions are not in point" why did it not quote the language in the decision of the Supreme Court and leave future Courts and litigants to judge for themselves whether the Courts assertion was sound or not. Let us take the Bronson case and quote what the Supreme Court said was the law on this point of appealing:

> "They (the parties) having appealed from the decree, it would be against all reason and principle to

permit them to proceed in the execution of it pending the appeal. They assert that the decree is founded in error and for that reason should not be executed, but should be reversed and corrected in the Appellate tribunal. The Appeal suspends the execution of the decree."

(Bronson v. LaCross, 1 Wall. 405, 17 L. Ed. U. S. 616).

(i) Let us also quote from 6th Cyc. Fed. Proc. Sec. 2862 page 341:

"Accordingly, one appealing from a decree or judgment in his own favor supersedes it by so appealing and can not execute it." The Author of Cyc. Fed. Procedure cites the Bronson decision.

These two authorities directly contradict the Courts statement.

"Why stand we here idle?" Why tarry any longer? These cases settle the question. The language of these two decisions is as plain as the "Lord's Prayer" or his "Sermon on the Mount." Who would question the meaning of them?

Once on a time there was a Judge of the Supreme Court of our State who would say: "We have examined the instruction questioned here, and find it is a correct statement of the law," but would never set out the instruction.

The Court here must have intended by making the statement that these decisions were "not in point," to foreclose the argument; but it overlooked that this appeal gave the Debtors an opportunity to have the Supreme Court examine this language.

(j) Then the Court repeats the following statement made by Judge Duffy in his order:

> "There is no reason why the sum of $6000.00 could not have been deposited in Court before the expiration of the one year period."[1]

The Supreme Court has given the reason. There was no reason requiring them to pay it within the year ending May 27, 1942.

(k) Honor bright. Why would the Court of Appeals fail to set out the language of the Supreme Court in the Bronson case and the other authorities cited, and make such a statement as that? That made the judgment dormant until its appeal was settled and any one would know that the Debtors did not have to pay the redemption money within the one year from May 27, 1942. The action of the Creditor extended the time to one year from October 9, 1942. The Supreme Court based its decision on solid ground when it said:

> "It would be against all reason and principle to permit them (Appellants) to proceed in the execution of it (judgment) pending the Appeal."

It follows as the "night the day" if the Creditor in this case had tied its hands and could not execute its own judgment while the appeal was pending, it follows that said judgment was not running against the Debtors at the same time. That proposition cannot be overthrown. In other words the $6000.00 judgment was as "Dead as Julius Caesar" from the time the Creditor appealed to the Court of Appeals, until it was affirmed on October 9, 1942. Then it began to run.

(l) It is foolish and absurd to contend that a party could appeal from its own judgment and at the same

[1] That is not the question here. The question is, the law did not require them to pay it in while the Respondent was appealing.

time execute or enforce it. If he could not enforce it, it was not running. Men have not lost their reason.

It was the imperative duty of the Court of Appeals to follow the decisions of the Supreme Court and apply them in this case, and hold as it held when the Creditor appealed from its own judgment, it lost the right to execute it, and when it lost that right to execute it there was no power in the Court below (Duffy order) to bring present life into that judgment and hold it was running at a time when it could not be executed. That hence the Court should have promptly allowed the Debtors to redeem at the $6,000.00 and ordered that said $450.00 and said $843.00 should be credited on said debt. Hence, the Court erred in refusing to allow the Debtors to redeem.

(m) The Court of Appeals in affirming the order of Judge Duffy thereby approve the order allowing the Creditors to bid the whole amount of their claims. This will defeat redemption and the intent of Congress and overrule the Supreme Court's decision in the Wright case, 311 U. S. 273.

> (a) The Supreme Court held in that case the following: "This Act provided a procedure to effectuate a broad program of rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt." "Safeguards were provided to protect the rights of secured creditors, throughout the proceedings, to the extent of the value of the property." "There is no constitutional claim of the creditor to more than that. And so long as that right is protected the Creditor certainly is in no position to insist that doubts or ambiguities in the Act be resolved in its favor and against the debtor." "Rather, the Act must be liberally construed to give the debtor the full measure of the relief afforded by

Congress. (John Hancock Mut. L. Ins. Co. v. Bartels, supra; Kalb v. Feuerstein, 308 U. S. 433, 84 L. ed. 370, 60 S. Ct. 343, 41 Am. Bankr. Rep. (N. S.) 501, supra), lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act."

(b) It is clearly shown at the close of said opinion that a minority of the Judges held that the appraised value should prevail during the three year period of redemption in Subsection (s) Paragraph 3, or a less period as allowed here, and also applied where a public sale was ordered after the failure of the Debtors to redeem, and that the Debtors pray this Court to reconsider that ruling and to modify the order of sale herein to the effect that said Creditor shall not raise the price of said land above the present appraisal by bidding their dead debt and that the Debtors may redeem said land at said public sale at $6,000.00 and that it be ordered that the $6,000.00 now in the registry of the District, be applied on said redemption and the Creditor be required to accept said sum as payment in full of its whole debt and to discharge them of the balance above said sum. Hence, the Court of Appeals erred in refusing to allow them to redeem and in denying their petition to so redeem. And also erred in allowing said Creditor to raise the price of said land up to $9000.00 or more and defeat redemption by requiring the Debtors to pay $9000.00 and more for land that was appraised at only $6000.00 and on appeal, on the ground that said sum was too low, this Court of Appeals affirmed said judgment. Hence the Circuit Court of Appeals erred in approving and affirming the erroneous final judgment entered by Judge

Duffy on February 24, 1943—in not reversing said judgment.

III HOW SHALL THIS APPEAL BE TAKEN?

(a) Section 24 (a) of the Chandler Bankruptcy Act of June 22, 1938 (c) or the same section 47 (11 U. S. C. A.) (c) provide the following:

> "(b) Such appellate jurisdiction shall be exercised by appeal and in the form and manner of an appeal."
>
> "(c) The Supreme Court of the United States is hereby vested with jurisdiction to review judgments, decrees, and orders of the Circuit Courts of Appeals of the United States and the United States Circuit Court of Appeals for the District of Columbia in proceedings under this Act in accordance with the provisions of the laws of the United States now in force or such as may hereafter be enacted."

(b) This Act took the place of the previous provision for a Writ of Error, which was abolished on January 31, 1928. The Act reads as follows:

> "ACT OF JANUARY 31, 1928.
>
> Chapter 14, 45 Stat. 54.
>
> An Act in reference to writs of error.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal.

SEC. 2. That in all cases where an appeal may be taken as of right it shall be taken by serving upon the adverse party or his attorney of record, and by filing in the office of the clerk with whom the order appealed from is entered, a written notice to the effect that the appellant appeals from the judgment or order or from a specified part thereof. No petition of appeal or allowance of an appeal shall be required: Provided, however, That the review of judgments of State courts of last resort shall be petitioned for and allowed in the same form as now provided by law for writs of error to such courts." (U. S. Code 1926 to December 3, 1928—See 861 a & 861 b Revised Rules of the Supreme Court of the United States Appendix Page 10.)

(c) Section 2 of the above Act was amended April 26, 1928 as follows:

"SEC. 2. The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and invoking such relief, including the provisions relating to the appeal which the preceding section substitutes for a writ of error."

(d) The old Act as to Writs of Error reads as follows:

"This section prior to its amendment read as follows: 'In all cases where an appeal may be taken as of right it shall be taken by serving upon the adverse party or his attorney of record, and by filing in the office of the clerk with whom the order appealed from is entered, a written notice to the effect that the appellant appeals from the judgment or order or from a specified part thereof. No petition of appeal or allowance of an appeal shall be required: Provided, however, That the review of judgments of State

courts of last resort shall be petitioned for and allowed in the same form as now provided by law for writs of error to such courts." United States Code Compact Ed. to Dec. 3, 1928, after 861b.

(e) It will not be disputed but that the writ of error to review the proceedings in a Court is of Common Law origin and that it was a writ "as of right." (Revised Rules Supreme Court—Appendix, page 10).

(f) The method of obtaining such a writ set out above is in substance as follows: (a) That they will file the proper number of copies of the petition to appeal in the office of the Clerk of said Court of Appeals. (b) "It shall be taken by serving upon the adverse party or his attorney of record a written notice (citation) and a copy of the printed record herein to the effect that the appellant appeals from the judgment or order of the Court to a higher Court to review said judgment on account of certain errors, setting out said errors to be defended by the defendant in error. And will have a citation issued to be served on said defendant. All of this will be included in the transcript of the proceedings in said Court of Appeals. (c) And also by filing in the office of the Clerk of said Court a formal notice of said appeal. (861 b U. S. Code 1926 to December 3, 1928).

(d) 2 R. C. L. p. 100 gives the following additional information as to a writ of error:

> "* * * it would seem that a petition which gives the name and residence of the opposing party, the County (or Court) in which the judgment was obtained, the term of the Court, the number of the cause on the docket and the judgment asserts (sets out) the errors and requests a citation (under name of President) to issue to the defendant in error to appear

before the reviewing Court at the next term (or any day certain) and defend the writ, is sufficient."

(e) The Petitioners herein will take all of said steps in taking this appeal which is substituted for a writ of error in the above cause.

That the Petitioners say the errors set out above and which will be set out in the assignment of errors filed herewith could have been appealed to the Supreme Court by a petition for a writ of errors, as sued out, under the practice and provisions for such a writ, prior to its abolishment on January 31, 1928.

Wherefore, the Petitioners pray the Supreme Court of the United States to hear and review the errors in the judgment of the United States Circuit Court of Appeals, as set out in the above petition and as set out in the designation of points of law as filed in said Court of Appeals, also as set out in their petition for a rehearing filed in said Court and also as set out in the assignment of errors attached hereto and made a part of this petition for an appeal and to review any other plain errors shown in the records of said cause.

That they will first file said petition in the office of the Clerk of said Court of Appeals and afterwards file the same in the office of the Clerk of the Supreme Court properly certified. That it will ask said Clerk to issue said notice or citation to be served on said defendant in error and will issue a written notice to said clerk that it appeals from said judgment.

That said Petitioners will also file a petition in the office of the Clerk of the Supreme Court praying for a writ of certiorari, directing said Court of Appeals to send the record and proceedings showing the errors in said cause

up to it for review and correction. That they will take all of the other steps required to perfect said petition for a writ, including the filing of the proper number of copies of the printed record and a transcript duly certified of the proceedings in said Court of Appeals and also including a copy of the opinion of the judgment of said Court of Appeals rendered in said cause on December 2, 1943, at the October term 1943 of said Court, and all of the other proceedings in said Court of Appeals. That hence, it will not be necessary for them to file another set of printed copies of the record and of the proceedings in said Court and they will ask said Supreme Court to allow them to use the same record to present this petition for a direct appeal herein as is filed and used in the petition for certiorari.

That it will have the clerk of said Court of Appeals to certify this petition and assignment of errors for appeal and of said other proceedings in said cause in printed form and in proper numbers as required by the Rules of this Court, and they will do everything else necessary to bring all of said errors before this Court for review and correction.

That the Petitioners will file a brief in the Supreme Court in support of this petition and assignment of errors. And pray that this appeal be considered and said errors reviewed and corrected.

That they pray the Court to reverse and set aside said judgment of said Court of Appeals and to grant the Petitioners petition the right to redeem said real estate at said $6000.00. And that the said Respondent take nothing by its answer and cross-action as to said $450.00 stock and $843.00 rent.

That said lower Courts be ordered to turn over "full possession and title" to said land "free and clear" of all incumbrances and free of all other claims set out in said petition and that they be discharged of all of said mortgage debt above said $6000.00.

That to order that said Respondent can recover only said appraisal of $6000.00 and no more and that said stock and rent be credited on said debt and for all other relief to which they are entitled under said acts of Congress.[1-2]

Respectfully submitted,

Rufus Meshberger and
Lelia B. Meshberger,
Husband and Wife, Petitioners.

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[1] And to hold that the action of said Respondent in bringing said stock and rent into this trial before said Judge Duffy re-opened said judgment of May 27, 1941, and to a consent that said Court had jurisdiction to allow them (—19—) the right to redeem.

[2] Admission that question as to redemption was open will be shown in Brief to be filed herein. (R. p. 115 middle—Appellant's Brief Court Appeals, p. 31.)

STATE OF INDIANA
COUNTY OF ADAMS } SS:

Rufus Meshberger, being duly sworn says he is a resident of said County and State of Indiana and that he is one of the petitioners in the above cause and that the facts set out therein are true as he is informed and believes.

Rufus Meshberger

Subscribed and sworn to before me this 3rd day of February, 1944.

Samuel E. Cook,
Notary Public

My Commission expires 4-7-1947.

Samuel E. Cook, Huntington, Indiana
Elmer McClain, Lima, Ohio
Counsel for Petitioners

STATE OF INDIANA
COUNTY OF HUNTINGTON } SS:

Samuel E. Cook, Counsel for the above, petitioners, does hereby certify that in his opinion the above and foregoing petition for an appeal in said cause to the Supreme Court of the United States is well founded and presented in good faith and not for delay.

Samuel E. Cook,
Counsel for Petitioners.

February —, 1944